

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 664
Case No. 89-19C
(PUD & Map @ Centerleg Freeway)
June 11, 1990

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on October 26 & 30, and December 4, 1989. At those hearing sessions, the Zoning Commission considered an application of the District of Columbia Department of Housing and Community Development (DHCD) and the Washington Development Group (WDG). The application is for consolidated review and approval of a Planned Unit Development (PUD) and related amendment to the Zoning Map of the District of Columbia, pursuant to Chapter 24 and Section 102 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. The application, which was filed on June 26, 1989, requested consolidated review and approval of a PUD and related amendment to the Zoning Map from unzoned property to C-3-C.
2. The PUD site is property in the air space over the Centerleg Freeway (Interstate #395), is bounded by Massachusetts Avenue, and Second, Third, and E Streets, N.W., and measures approximately 271,400 in area.
3. The applicants propose to construct a 222,280 square foot deck over I-395, and develop thereon a mixed-use project containing office, retail, hotel, and residential uses.
4. This site has been the subject of two previous applications to the Zoning Commission by the applicants.
 - a. The first application, filed on September 19, 1988 (Z.C. Case No. 88-26), requested approval of a consolidated PUD and presumed the site was located in the HR/C-3-C Zone District. The applicants

requested Zoning Commission review pursuant to the Public Space Utilization Act, D.C. Code section 7-1034(2) (1981). On October 6, 1988, the applicants withdrew their request for review under the Public Space Utilization Act after the Office of Corporation Counsel (OCC) advised that the project did not fall within the purview of that Act.

- b. On January 13, 1989, the applicants filed a zoning map amendment application (Z.C. Case No. 89-4). The application was filed in response to an opinion of OCC dated November 21, 1988, which advised the Zoning Commission that it would have jurisdiction to hear the case when a private property interest in the public air rights was established, or when the District of Columbia government waived its immunity from zoning under Section 106.4 of the Zoning Regulations. Accompanying the filing on January 13, 1989, was a letter from DHCD, on behalf of the District of Columbia government, waiving its immunity from zoning.
5. Fourteen days prior to the May 1st initial hearing date in Case No. 89-4, the President and Directors of Georgetown University (Georgetown) requested party status on the basis of Georgetown's ownership of property adjacent to site. Georgetown also filed a motion to dismiss the case on the grounds that:
- a. The Zoning Commission has no jurisdiction to zone the site and that use of the site would require Congressional approval;
 - b. Congress has retained control over any development of the Site; and
 - c. Neither DHCD nor WDG have standing before the Zoning Commission.

On April 28, 1989, the applicants filed a response in opposition to Georgetown's motion to dismiss.

6. At its hearing on May 1, 1989, the Zoning Commission, on the advice of OCC, agreed to hear the case, while OCC simultaneously considered the legal issues raised by Georgetown. On May 12, 1989, OCC issued a written opinion rejecting Georgetown's contentions and advising that DHCD has standing to pursue the zoning designation of the site and that the Zoning Commission has jurisdiction to hear and decide the merits of the proposed designation.

7. The OCC opinion, which was incorporated into the record of the present case, stated that:
 - a. The Community Development Act authorizes the Mayor to implement an Approved Community Development Program (D.C. Code section 5-904(b);
 - b. The CD-13 Program was amended by the Council of the District of Columbia to approve specifically the construction of the proposed project (D.C. Council Res. 7-288, Jul 12, 1988);
 - c. The Mayor delegated authority to the Director of DHCD to dispose of the air rights (D.C. Code < 5-904(c) and Mayor's Order No. 88-195, August 24, 1988; and
 - d. Therefore, DHCD has full authority to seek a zoning designation of the project under the Community Development Act.
8. As to the Zoning Commission's jurisdiction, the OCC, opinion stated that the Public Space Utilization Act was not meant to increase or decrease the zoning authority of the Zoning Commission, and hence, the inapplicability of the Public Space Utilization Act does not impair the Zoning Commission's authority to zone the site.
9. The OCC opinion also stated that title to all streets and alleys within the Centerleg Freeway, between E Street and Massachusetts Avenue, N.W. including F and G Streets had been constructively vested in the District as a result of the permanent physical alteration of those streets to complete the freeway construction.
10. The OCC opinion stated that the zoning of the site by the Zoning Commission does not violate section 602(a)(3) of the Home Rule Act. The OCC opinion noted that the federal interest is fully protected since 23 U.S.C.A. section 111 provides for agreements by the Secretary of Transportation which ". . . authorize a state [defined to include D.C.] or political subdivision thereof to use or permit the use of the space above and below the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway . . . or otherwise interfere in any way with the free flow of traffic on an interstate system."
11. The Zoning Commission held hearings on May 1 & 4, 1989 on the application in Z.C. Case No. 89-4. On June 12, 1989, the Zoning Commission discussed the case and expressed a preference for reviewing a project of the

scale proposed by the applicants in the context of a combined zoning map amendment and PUD application.

12. On June 26, 1989, the applicants filed the subject application and withdrew the HR/C-3-C zoning map amendment in Z.C. Case No. 89-4. The map amendment in the subject case is for C-3-C. The record of the previous case was integrated into the subject case.
13. The C-3-C District permits matter-of-right major business and employment centers of medium/high density development, including office, retail, housing, and mixed uses to a maximum height of ninety feet, a maximum floor area ratio (FAR) of 6.5 for residential and other permitted uses, and a maximum lot occupancy of one hundred percent.
14. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a first-stage PUD. The Commission may also impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified above for height, FAR, lot occupancy, parking, and loading, or for yards and courts. The Zoning Commission may also approve uses that are permitted as a special exception and would otherwise require approval by the Board of Zoning Adjustment (BZA).
15. The District of Columbia Generalized Land-Use Map Element of the Comprehensive Plan for the National Capital designates the PUD site as included and/or near the "high density commercial category", the "high density mixed-use commercial/residential category" and the "public and institutional categories".
16. The area surrounding the PUD site contains a wide variety of uses, including institutional, large-scale office and medium-scale residential and commercial uses. Several of the blocks surrounding the site have been developed or are planned for development with large commercial office buildings. The largest interruption of the urban fabric of the area is the Centerleg Freeway itself.
17. Immediately north of the site, across Massachusetts Avenue, is an unimproved open space over the freeway. Directly to the east, across Second Street, is the Georgetown University Law School building and the recently constructed Edward Bennett Williams Law Library. To the southwest, across E Street, are the U.S. Tax Court Building, the Judiciary Center office structure (under construction), and the four-story Trinity Apartments, which are occupied by low-and

moderate-income tenants. To the northwest, between Massachusetts Avenue and G Street, are the five-story Canterbury Apartments and the six-story Best Western Lawyers Inn Hotel. The remainder of that block generally consists of boarded-up two- and three-story rowhouses.

18. The PUD site is currently unzoned, pursuant to 11 DCMR 106.4, but is surrounded by HR/C-3-C, C-3-C, HR-SP-2, and SP-2. The proposed C-3-C zoning of the PUD site would be a logical extension of the prevailing C-3-C and HR/C-3-C zoning, which is located on three sides of the PUD site.
19. The applicants propose to construct a five-structure mixed-use project consisting of residential, office, retail, and hotel uses. The five structures will be linked together by a deck over the freeway. The deck will constitute a single building, for zoning purposes. The following will apply:
 - a. The hotel component of the project will consist of 320 rooms with a gross floor area of 284,651 square feet;
 - b. The residential component of the project will consist of approximately 234 rental dwelling units, of which thirty (30) percent will be reserved for low and moderate income families and individuals;
 - c. The office/retail component of the project will consist of three (3) separate structures with a total gross floor area of 1,705,019 square feet (one bldg. at 367,049 sq. ft.; another bldg. at 348,763 sq. ft.; and the third bldg. at 283,586 sq. ft. of gross floor area); and
 - d. The deck generally will contain two levels of parking consisting of 754 parking spaces utilizing a combination of valet and self-park spaces. On the surface of the deck will be open-space plazas and a covered pedestrian walkway.
20. The project will have a maximum height of 120 feet, a maximum FAR of 6.08 (3.68 FAR for office/retail use, 1.82 FAR for residential use, and 0.58 FAR for above-grade parking), and a maximum lot occupancy of eighty-two (82) percent.
21. At the public hearing, the applicants testified that the project will create a number of benefits for the community, as follows:

- a. The project will include approximately 50,000 square feet of retail space to serve residents and employees in the project as well as the surrounding neighborhood. The mix of office, housing, hotel and retail uses in the project will upgrade the character of the neighborhood by providing an appropriate mix of public and private activities along with a generous amount of public open space. The residential and hotel uses will help foster a twenty-four-hour living environment and contribute to the development of a "Living Downtown";
- b. The project will contain a child development center which will serve the needs of the neighborhood, residents of the apartment structure, and tenants of the office structures;
- c. WDG entered into a Memorandum of Understanding with the Minority Business Opportunity Commission (MBOC) whereby WDG will use its best efforts to secure thirty-five (35) percent of all contracts, both during construction and after completion, for minorities. WDG is also creating a Minority Business Enterprise Corporation (MBE) which will provide technical and financial assistance to minority contractors in order to increase their participation in the construction of the project. WDG will capitalize the MBE at three million dollars;
- d. The project will generate approximately 2,200 jobs. Of these, approximately 1,120 will relate to construction of the project, while the remaining 1,080 will represent permanent employment opportunities related to the project;
- e. WDG has agreed to participate in the District of Columbia's First Source Employment Program to fill entry-level positions over which it will have direct control. WDG expressed its intention to create meaningful jobs for Ward 2 residents, particularly youths;
- f. WDG has entered into an agreement with the Washington Building and Construction Trades Council (BCTC) that represents one of the most progressive labor agreements in the industry. The BCTC agreement establishes apprenticeship training programs for qualified District residents and minorities, sponsored by the BCTC, for periods ranging from three to five years. Upon completion of the programs, graduates will receive journeyman certification in their respective trades. In

conjunction with District requirements regarding minority and female hiring practices, the BCTC agreement will ensure that the project generates long-term employment opportunities for neighborhood and other District residents;

- g. The project will result in significant additional tax revenues for the District, including property, income, sales, franchise, hotel room and parking taxes. The project is projected to produce \$6.5 million annually in new or retained tax revenues for the District; and
 - h. WDG has agreed to adopt and improve the District-owned park located on the north side of Massachusetts Avenue between Second and Third Streets, N.W. for so long as WDG retains an interest in the project.
22. The applicants, through their architect, testified that the requested C-3-C zoning for the site will allow the construction of the proposed high-quality mixed-use project and will be entirely consistent with the following goals of the Comprehensive Plan:
- a. Developing over the Centerleg Freeway;
 - b. Completing development of Downtown East primarily as an office and hotel area with a special physical character related to New Jersey Avenue, N.W., and the adjacent U.S. Capitol grounds;
 - c. Orienting future development to New Jersey, Massachusetts and Louisiana Avenues, N.W., and North Capitol Street to frame these important streets;
 - d. Facilitating development of hotels in Downtown East; and
 - e. Encouraging residential use as part of mixed-use projects south of Massachusetts Avenue, N.W.
23. The applicants further testified that, with specific reference to the site, the proposed zoning and the project fully satisfy all three of the following provisions of the Comprehensive Plan:
- a. "Realizing the opportunity for development over the Centerleg Freeway between E Street, N.W., and Massachusetts Avenue, N.W., when feasible",
 - b. "Maintaining flexibility in outlining uses for air

rights development over the Centerleg Freeway despite economic and technical uncertainties"; and

- c. "Designing freeway air rights development that is sensitive to impacts on adjacent areas and the preservation of the views along F and G Streets, N.W.
24. The applicants indicated that some changes to the project had been made resulting from their architect having worked with OP to vary the heights of the structures, introduce setbacks, and provide breaks in the massing of structures. The applicants indicated that three of the structures will be 130 feet high and two will be 120 feet high. The setbacks and breaks in massing have been introduced in the various structures. These changes have resulted in a project with proportions and scale reflecting the architectural vernacular of the area and the design of the nearby Georgetown Law Library. The following also applies:
- a. The entrances to Office Structures A and C have been relocated, following the June 26th filing, so that they face each other across a main entry plaza on Massachusetts Avenue, thereby helping to reinforce the project's north-south spine. Other changes include the creation of a large landscaped and furnished pedestrian plaza at G Street, a landscaped automobile-pedestrian entry terrace at F Street, and a new pedestrian terrace between the hotel and apartment structures; and
 - b. Flexibility was requested to reduce the number of loading spaces required by as many as three, since the different loading needs of the various uses in the project will allow them to share space efficiently. The reduction would be subject to the review and approval of DPW.
25. The applicants, through their traffic consultant, testified as follows:
- a. The PUD site can be developed without adverse transportation or traffic impacts;
 - b. The PUD site is adequately served by the nearby Judiciary Square Metrorail Station and by the many buses that traverse the area. Measures recommended to mitigate traffic impacts from the project include the prohibition of on-street curb parking during peak traffic hours and optimization of traffic signal timings;
 - c. DPW plans to reconfigure the intersection of

Massachusetts Avenue and Third Street, so that left turns will no longer be allowed from westbound Massachusetts Avenue onto southbound Third Street. Bases upon that reconfiguration, vehicular access to the PUD site will be provided via E Street, Second Street or Massachusetts Avenue, N.W. Ingress and egress from Massachusetts Avenue and E Street will occur via right turn movements only;

- d. Ingress and egress from Second Street will occur via left turn movements. A porte-cochere area off Second Street opposite F Street will provide access to apartment and office structures. Access to truck docking facilities will be from Massachusetts Avenue and Second Street; and
 - e. The parking garage will contain two levels, except under Office Structure C, where it will contain three or more levels. A total of 754 self-park and valet-park spaces will be provided, which exceeds what is required by the Zoning Regulations. Under the Regulations, the office structures in the project will require 556 spaces, the residential structure will require 59 spaces, and the hotel will require 90 spaces, for a total requirement of 705 spaces.
26. The applicants' environmental consultant submitted testimony that the project will not have a significant negative impact on air quality or noise levels in the area. Minor air quality and noise impacts during construction will be temporary and will be mitigated. No hazardous material disposal problems have been identified which will require remediation.
27. The applicants' highway engineer submitted testimony for the record indicating that the project would be constructed in strict compliance with all Federal and local highway standards. Modifications to the freeway necessary for construction of the project will comply with all District and Federal requirements. Traffic devices adhering to Federal standards will be used at all times to advise motorists of construction activities on or near the Freeway. An air ventilation systems will provide sufficient dilution of vehicle exhaust to maintain District, OSHA and Federal highway requirements.
28. The applicants' structural engineer submitted testimony for the record indicating that the project would be designed to conform to all applicable engineering and safety standards of the District and the Federal Highway Administration. The development of the project

will result in minimum negative impact on traffic flow on the Freeway.

29. The applicant's surveyor submitted testimony for the record indicating that the PUD site is bounded on the north by Massachusetts Avenue, on the east by the eastern boundary of the Freeway retaining wall and Second Street, N.W., on the south by E Street, N.W., and on the west by the eastern boundaries of Lot 859 in Square 568, Lots 850 and 849 in Square 566, Lot 58 in Square 564 and a portion of Third Street, N.W.
30. The applicants' landscape architect testified that landscaping is a key component and theme of the overall project design and an important contribution to the overall fabric of the District of Columbia. The project's landscaping was designed consistent with the District's theme of using open space, parks and plazas. The applicants did not object to the notion that they would landscape the District-owned park located across Massachusetts Avenue in connection with the construction of the project.
31. The District of Columbia Office of Planning (OP), by memorandum dated October 18, 1989 and by testimony presented at the hearing, recommended that the application be approved. OP indicated the following:
 - a. The applicants had done an exemplary job of refining the project's design and in consultation with OP reflecting the policies of the Comprehensive Plan. OP was enthusiastic about the project and that its recommendation for approval was based on numerous meetings and deliberations between the applicants following the June 26, 1989 filing. The modifications subsequent to the filing addressed many of the concerns expressed by OP in its preliminary report with respect to height, bulk, and urban design elements;
 - b. The applicants were successful in achieving a project which is compatible with surrounding uses in the neighborhood, particularly the Georgetown Law School Library;
 - c. The perceived height of the project has been reduced and tailored to fit its complex environment by varying the overall heights between 120 and 130 feet, by the use of setbacks and major facade design breaks at approximately 100, 110 and 120 feet and by the integration of the penthouse design into the overall design of each structure;
 - d. "The proposed project design picks up the

proportions used in the Georgetown University Law Library building, establishing rhythms which vary from structure to structure, and creating a variety within a family of forms . . .";

- e. The extensive landscaping proposed for the Second Street frontage not only enhances the visual quality of Second Street, but softens the visual impact of the solid podium base of the project and helps to tie the five structures together;
 - f. The F and G Street vistas would not be severely impaired by the project, except that the podium would conceal the base of the North Capital Street Post Office building which is currently visible only during the winter, anyway, when there are no leaves on the trees; and
 - g. The project is consistent with the goals and objectives of the Comprehensive Plan for the development of the air rights above the freeway and Downtown East. Further, the project design, with its heights and setbacks, is sensitive to the existing and potential future development of this area of the District.
32. The District of Columbia Department of Housing and Community Development (DHCD), by memorandum dated September 26, 1989, indicated that the proposed PUD and map amendment request to consistent with the Land Use Element of the Comprehensive Plan and is in compliance with the regulations for the C-3-C Zone District. The memorandum further indicated that the project would create a high-quality development, assure that economic benefits are shared by residents of the District and create numerous benefits to the District including housing, jobs and tax revenues.
33. The District of Columbia Department of Finance and Revenue (DFR), by memorandum dated October 10, 1989, indicated that the project would likely result in substantial revenues to the District and would assist the development of the eastern portion of the downtown area.
34. The District of Columbia Department of Recreation (DOR), by memorandum dated October 12, 1989, indicated that it would like to receive more information regarding proposed recreation spaces and bedroom breakdown. OP reported at the hearing that the applicants met with DOR after October 12th and that DOR now supports the project.
35. The District of Columbia Metropolitan Police

Department, (MPD), by memorandum dated October 10, 1989, indicated that the proposed project would have minimal impact on the MPD and would not adversely affect the safety of the site or the surrounding property.

36. The District of Columbia Department of Public Works (DPW), by memorandum dated October 16, 1989, indicated that it had no major objections to the development concept proposed by the applicants. DPW raised the following concerns and questions:

- a. Whether the extension of the project into Second Street, as requested by DPW in connection with widening the Second Street ramp, conforms with Mayor's Order No. 88-195;
- b. That approval of the project should be made contingent upon the applicants' agreement to satisfy all local and federal highway standards with respect to pre-and post-construction standards;
- c. Landscaping on Second Street, Third Street and Massachusetts Avenue should follow the plan prepared by DPW and all costs should be fully borne by the applicants;
- d. That the intersection of Second Street and Massachusetts Avenue should be redesigned to increase right turn capacities from the northbound and the westbound approaches and to accommodate improved access from the freeway off-ramp, north of G Street;
- e. That the proposed semi-circular driveway at the points of access do not conform to departmental standards; therefore, further coordination of the location and design of these driveways would be necessary;
- f. That the loading dock abutting Second Street was not designed for a "nose-in and nose-out" operation;
- g. That the applicants should provide information to DPW to adequately assess the project's impact on local water and sewer facilities;
- h. That the Federal Highway Administration in addition to DPW must review and give final approval to the design and construction plan and phasing schedule for the proposed deck of the project; and

- i. That the development proposal must include a plan for the safe flow of traffic during the construction of the deck and that the applicants must submit to DPW and the Federal Highway Administration a traffic control plan which assures effective traffic management during each of the deck construction phases.
37. DPW, by supplemental memoranda dated October 30 and November 17, 1989, and February 9, 1990, reported that it has no objections to the revised plans, which resulted from the resolution of DPW concerns regarding the following:
 - a. The relocation of the island near the loading area;
 - b. The location of two (2) fifty-foot long loading berths in the loading area;
 - c. The establishment of short-term parking for small loading vans near the loading area and within the parking facility; and
 - d. That the dimensions of the circular driveway at F Street is in concurrence with the Fire Department.
38. The District of Columbia Fire Department (DCFD), by memorandum dated October 2, 1989, reported that the application appears to create major or undue hardships on the daily operations of the agency. DCFD indicated that it,

"..... is limited in its ability to provide emergency fire and rescue operations at heights over 110 feet. With the 130 foot height and the setback features added to the proposed development and the lack of emergency vehicle access to the perimeter of the Massachusetts Center, the tasks of providing Fire Department operations to upper levels is extremely difficult.

Based on the review of the above referenced application, the Fire Department objects to the requests. These objections will be removed when the Fire Department is satisfied that the proposed development will not unduly affect public safety."
39. The District of Columbia Office of Business and Economic Development (OBED), by memorandum dated November 21, 1989, did not object to the proposed zoning action, but expressed caution that consideration be given to appropriate retail amounts to provide adequate goods and services for the office, hotel, and residential tenants included in the project.

40. Advisory Neighborhood Commission 2C, by letter dated October 19, 1989, urged the Commission to approve the application stating its strong support for the housing component and the child development center. The ANC indicated that the project will result in many significant benefits to the community, including jobs, tax revenues and housing, of which 30% will be set aside for low-and moderate-income persons. The ANC indicated that it would like to see the applicants increase the proposed amount of retail and housing and that the applicants should pay market value for the project site.
41. Georgetown University (GU), party to the proceeding and owner of property adjacent to and across Second Street from the PUD site, opposed the application.
42. GU, by written submissions and by testimony presented at the public hearing, stated its objection to the projection of Building "B" into the Second Street right-of-way. GU stated that the western boundary of the Second Street right-of-way was not changed by the building of the freeway, as indicated by the Surveyor's Office plans. GU stated that the projection of Building B which extends beyond the limits of the PUD site into the Second Street right-of-way is too close to the Georgetown Law School buildings. GU continued that the projection would have an adverse affect on GU as well as the public space of Second Street and, therefore, Building "B" should be set back to eliminate any projection into public space. GU stated that the applicant offered no evidence indicating that such a setback is structurally or economically infeasible.
43. GU stated that the podium, which extends for three city blocks and ranges in height from eleven to thirteen feet, obstructs the F and G Street vistas and creates a barrier which is adverse to the neighborhood public space and is not conducive to a university setting. GU stated that the podium at F and G Streets should be lowered to a height of four and one half feet above grade, which was the height imposed by the City Council on Georgetown, as a precondition of the closing of G Street between Second Street and New Jersey Avenue. GU continued that the applicant has failed to consider alternative design solutions which would make the lowering of the deck feasible.
44. GU testified that the loading docks and parking entrance of Second Street will cause noise and congestion directly adjacent to where GU plans to build a residential facility. GU requested in its December 21, 1989, letter to the Zoning Commission, that the applicants relocate or reconfigure the Second Street

loading facilities to eliminate the adverse impacts on its facilities.

45. GU's traffic consultant testified that the elimination of 71 on-street parking spaces will aggravate the parking situation in the area; that the Second Street loading facility will require a 55-foot truck to use the entire width of the street, thus eliminating parking on either the east or west side of Second Street. This condition will also require the use of the sidewalk directly in front of GU's proposed residential use in order to access the loading area and that access to the loading facility on Massachusetts Avenue will result in the blocking of both lanes of Massachusetts Avenue.
46. By testimony presented at the December 4, 1989, public hearing, the traffic consultant for GU stated that although a 74% modal split is achievable, it will be impossible to achieve if the applicant implements nothing more than the traffic plan it presented. The traffic consultant added that a detailed transportation management program is required to reach the desired 74% modal split.
47. GU, by posthearing submission dated December 21, 1989, stated that the applicant's explanations of why a through-block connector was not feasible were confusing and not persuasive and in need of further articulation. GU noted that the record is void of economic information relating to the amount of office space needed to sustain the project and that the applicant provided no analysis of the economic feasibility of the project.
48. Several letters were received from persons in support of the PUD and map amendment application because of the positive impact that the project would have on the neighborhood.
49. Two persons testified in opposition to the application because of insufficient number of residential units, height of project, need for community-base child development center, and urban design concerns.
50. Following the hearings on October 26 and October 30, the applicants were requested to file certain post-hearing information. The applicants' post-hearing submission filed on November 17, 1989, addressed the following issues:
 - a. A breakdown of the number of one and two bedroom units to be provided in the apartment structure;

- b. The identification of the play area for the child development center;
 - c. A description of how the upper level of the parking garage, as viewed from Second Street will be screened and a description of project lighting;
 - d. A plan indicating truck maneuvering in and out of the Second Street loading area and an explanation of why the through-block-connector proposed by GU would not be feasible;
 - e. The agreement by the applicants to provide a garage management plan, a loading management plan, a traffic management plan and a construction management plan to DPW prior to obtaining a certificate of occupancy for the project;
 - f. The applicants' proposal to relocate Structure B back to the eastern boundary of the existing freeway retaining wall;
 - g. The applicants' explanation of why the podium at F and G Street plazas could not be lowered to 4 1/2 feet as suggested by GU without a serious loss of parking spaces and garage maneuvering space;
 - h. The supplemental testimony of the representative of DHCD regarding the infeasibility of reducing the commercial density of the project;
 - i. A response to the testimony of GU's traffic expert regarding alleged discrepancies in the traffic report prepared by the applicants' traffic consultant;
 - j. A listing of all the issues which GU and WDG have resolved;
 - k. The agreement by WDG to maintain the city park across Massachusetts Avenue for the life of the project;
 - l. A full size set of fully dimensioned drawings;
 - m. Detailed plans indicating the project streetscape along Second Street, N.W.; and
 - n. The height above sea-level of the podium and deck of the project.
51. GU filed a post-hearing submission on November 27, 1989, which raised the following concerns:

- a. GU requested additional information, including data explaining the economic impact of reduction in project bulk; the location of right-of-ways; the architectural finish and screening for the Second Street loading area; and additional information regarding heights, location, massing and stepping; and
 - b. GU objected to the applicants' responses in the applicants' November 17th filing with regard to issues including truck maneuvering, setback of Structure B, traffic analysis, economic analysis as it relates to the infeasibility of adding a through-block connector, reducing bulk further, decking over the entire freeway or lowering the podium.
52. At the hearing on December 4, 1989, the applicants provided additional information. The applicants' December 4th submission and testimony addressed the following:
- a. The applicants supplemented the information provided in their November 17, 1989 submission with regard to several issues, including economic data, right-of-way boundaries, finish and screening of loading areas, screening and lighting of the parking garage as seen from Second Street, location of children's play area, location and servicing of retail uses and the infeasibility of further reductions in bulk, decking the entire freeway, providing a through-block connector, or lowering the podiums;
 - b. The applicants agreed to reduce the apparent bulk and to improve the design of the Second Street facade of Structure A in response to concerns raised by the Zoning Commission and OP; and
 - c. The applicants also submitted a memorandum between DPW and WDG indicating that all issues raised by DPW in its report of October 16, 1989 have been resolved.
53. On December 21, 1989, GU filed a response stating concerns with regard to the following issues:
- a. That the applicants do not have a legal right to construct the project over the Centerleg Freeway or to construct certain structures into the Second Street public space;
 - b. That the projection of the proposed project into

the public space of Second Street will adversely affect Georgetown by narrowing Second Street and creating a barrier for the GU Law Center across the street;

- c. That the agreement between DPW and WDG dated December 4, 1989, agreeing to resolve DPW's concerns raised in its October 16th report was "futuristice and legally non-binding."
 - d. That the applicant's response that it is not economically feasible to reduce the commercial density of the project is unsubstantiated; and
 - e. That the applicant has not developed a transportaion management program.
54. On January 2, 1990, the applicants filed a response to the December 21, 1989 filing by GU. The applicants response stated the following:
- a. When the Commissioners of the District of Columbia approved the construction of the Centerleg Freeway in 1963, the area that was formerly part of the Second Street right-of-way became merged into the freeway and is no longer than Second Street right-of-way, but is now freeway right-of-way;
 - b. The agreement between DPW and WDG dated December 4, 1989 is legally binding. The agreement requires WDG to provide certain design features and plans related to the project which will resolve the concerns raised by DPW in its October 16th report. The applicants are willing to be bound by a condition in the PUD order requiring WDG to resolve DPW's concerns as per the agreement between DPW and WDG dated December 4, 1989;
 - c. The applicants submit that the information provided in its post-hearing filing regarding the nonfeasibility of reducing the commercial bulk in the bulding is real and is substantiated. The applicants have indicated that the economics of subsidizing the cost of housing in the project requires the amount of commercial bulk provided;
 - d. The applicants are prepared to develop a transportation management program if required to do so by the Commission. The applicants are also willing to provide the same to DPW for its review and approval prior to obtaining a certificate of occupancy for the project; and
 - e. The applicants have provided a set of plans that

indicates the location and dimensions of Building "B".

55. The Zoning Commission concurs with the position of the applicants, OP, ANC-2C, and others, and finds that the application, as revised by post-hearing submissions, is an appropriate development for the PUD site.
56. The Commission finds that the project will have the positive impact of reinforcing the streetscape along Massachusetts Avenue and framing the Massachusetts Avenue view corridor. The proposed 120 and 130 foot heights of the project are in keeping with existing or proposed buildings in the surrounding area and are consistent with past policies expressed by OP.
57. With respect to the Second Street right-of-way issue, the Commission finds with the applicants that the existing freeway retaining wall projects into an area which was formerly the Second Street right-of-right. This area was incorporated into the freeway when the freeway was approved by the D.C. Commissioners in 1963. Therefore, the location of Structure B, which would rest on the east wall of the existing freeway exit ramp, is permissible and does not cause the structure to protrude into the Second Street right-of-way.
58. The Commission finds that the relocation of Building "B" at the eastern boundary of the existing freeway retaining wall will resolve many of the concerns raised by GU with respect to the structure's effect on the Georgetown Law Center and Law Library.
59. The Zoning Commission finds that the Memorandum of Understanding between DPW and WDG dated December 4, 1989, resolves the concerns raised by DPW. The memorandum requires the submission of certain plans to DPW for its review and approval. It is proper in zoning cases such as this one, that the applicants continue to work with DPW once zoning approval is granted to resolve the details of these concerns. The Commission does not concur with GU that public review and comment on all of the DPW issues is necessary.
60. The Commission is satisfied with the response from the applicants regarding the economic infeasibility of further reductions in the commercial bulk of the project. The Commission finds that the proposed balance between residential, office and hotel is acceptable.
61. The Commission finds that the podium at the F and G Streets cannot be further lowered because of the complications that would result in the parking garage

located within the deck of the project. These complications would adversely affect pedestrian and vehicular traffic as well as the amount of parking provided by project.

62. The Commission also finds that a through-block truck connector, as proposed by GU, is not functionally feasible for this project, nor is it necessary given the redesign of the loading dock permitting front-in and front-out truck maneuvering.
63. The Commission finds that the applicants have met the intent and purpose of the Zoning Regulations and further finds that the proposal is suitable for the site, and that the design, height, density, and scale are compatible with the subject neighborhood.
64. The proposed action of the Zoning Commission to approve the PUD proposal with conditions was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Governmental and Government Reorganization Act. NCPC, by report dated June 4, 1990 made no recommendation on the proposal.

CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means of controlling development of the subject site, because control of the use and site plan is essential to ensure compatibility with the neighborhood.
2. The development of this PUD carries out the purposes of Chapter 24 to encourage the development of well-planned residential, commercial and mixed-use developments which will offer a variety of building types with more attractive and efficient overall plan and design not achievable under matter-of-right development.
3. The development of this PUD is compatible with city-wide goals, plans and program, and is sensitive to environmental protection and energy conservation.
4. Approval of this application is not inconsistent with the Comprehensive Plan for the National Capital, as amended.
5. The approval of this application is consistent with the purposes of the Zoning Act.
6. The proposed application can be approved with conditions which ensure that the development will not have an adverse affect on the surrounding community, but will enhance the neighborhood and ensure neighborhood stability.

7. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The Zoning Commission has accorded to the Advisory Neighborhood Commission 2C the "great weight" consideration to which it is entitled.
9. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of this application for consolidated review of a Planned Unit Development and zoning map amendment from unzoned property to C-3-C for the air space above the Centerleg Freeway which is bounded by Second Street to the east; E Street to the south; Third Street to the west; and Massachusetts Avenue, N.W., to the north. The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The Planned Unit Development shall be developed in accordance with the architectural plans of Kaplan McLaughlin Diaz, marked as Exhibits No. 36, 81, 93, 100 and 101, as modified by the guidelines, conditions and standards of this order.
2. The PUD project shall consist of a deck built over the Centerleg Freeway (I-395) upon which a hotel structure, an apartment structure and three office structures shall be constructed. These structures will be linked by a pedestrian walkway and constitute a single building for zoning purposes.
3. The PUD site shall include a portion of the Centerleg Freeway as shown on the plat of survey and marked as Exhibit No. 6 of the record and also as Exhibit No. 7 in Case No. 88-26. The PUD site contains 271,400 square feet of area, of which 222,280 square feet shall be developed.
4. The total floor area ratio (FAR) for the project shall not exceed 5.97, based on the site area of 271,400 square feet, of which 3.50 FAR shall be devoted to office, .19 FAR to retail, 1.72 FAR to hotel and apartments, and .56 FAR to parking.
5. Lot occupancy shall not exceed 82%.
6. The PUD project shall not exceed a height of 130 feet

as measured from the curb at the corner of Massachusetts Avenue and Second Street N.W. The height of the various structures in the project shall be as shown on Exhibit No. 101, as follows:

- a. The apartment structure shall not exceed 130 feet;
 - b. The hotel shall not exceed 120 feet;
 - c. Office Structure "A" shall not exceed 120 feet;
 - d. Office Structure "B" shall not exceed 130 feet;
and
 - e. Office Structure "C" shall not exceed 130 feet.
7. The setbacks provided on Office Structures "A" and "C" which face Massachusetts Avenue, N.W. shall be uniform in height.
 8. The project shall contain 234 housing units in the apartment structure. Not less than thirty (30) percent of the housing units shall be set aside for low and moderate income residents, as defined by the District of Columbia Department of Housing and Community Development.
 9. The project shall contain a hotel consisting of 320 units.
 10. The project shall contain 3,000 square feet of space for a child development center which shall accommodate a maximum of 72 children and shall be made available to employees of the PUD site and residents of the area. A play area for the child development center consisting of 4,320 square feet shall be located on the terrace level of the apartment structure.
 11. The project shall provide 754 parking spaces within the deck structure in a combination of self-parking and valet parking.
 12. Loading facilities for the project shall be in accordance with the plans marked as Exhibit No. 101.
 13. Vehicular access to the parking garage shall be from E Street, N.W., Massachusetts Avenue, N.W., and Second Street, N.W. as shown on Exhibit No. 101. The E Street access shall be used for ingress and egress by patrons of the hotel and other garage users. The access provided in Office Structure "A" shall be used for ingress and egress for all garage users. The Second Street access shall be used for ingress and egress for

apartment residents and the tenants of Office Structure "B". The parking garage shall have no openings which would emit light or fumes along Second Street other than what would normally be emitted from the ingress and egress openings.

14. Landscaped pedestrian plazas shall be provided between all structures. The podium of the project shall be screened with trees and plantings to soften its perceptible height.
15. A podium-level pedestrian walkway shall be provided along the entire western freeway frontage of the site.
16. Landscaping on the perimeter of the project shall be provided along the E Street, Second Street (especially at the location of office structure "B"), and Massachusetts Avenue frontages of the project.
17. The project shall contain 21,000 square feet of recreation space in a health club and roof terrace.
18. Retail and services shall be located in the hotel and other structures within the project, comprising 50,000 square feet.
19. The project shall be constructed in the following three phases:
 - a. Phase One shall be the construction of the deck over the freeway;
 - b. Phase Two shall be the construction of the apartment structure, and at least one office structure; and
 - c. Phase Three shall be the construction of the balance of the structures.
20. The applicant shall have flexibility with respect to the following matters:
 - a. Varying the structural support and framing of the deck above the freeway;
 - b. Varying the location and design of all interior components, including partitions, structural elements, slabs, doors, hallways, columns, stairways, location of elevators and electrical and mechanical rooms, so long as the variations do not change the exterior configuration of the building including the penthouse;
 - c. Making minor adjustments in the facade window

- detailing, including the flexibility to shift the location of the doors to the retail uses on the ground floor and to vary the type of panelling used on the retail frontages in order to accommodate the different types of retail uses;
- d. Varying the location and type of exterior lighting fixtures;
 - e. Varying the species of plant materials;
 - f. Phasing the development of the project, provided that the apartment structure is completed within the second phase;
 - g. Varying the final selection of the exterior materials within the color ranges and materials types as proposed, based on availability at time of construction;
 - h. Varying the arrangement of the parking spaces to provide the opportunity for storage and other space so long as such modifying does not reduce the number of parking spaces below 709, as required by the Zoning Regulations; and
 - i. Varying the floor area of retail space provided in the project by not more than ten (10%) percent pursuant to Condition No. 4 of this order; and
 - j. Varying the location of retail space provided in the project, depending upon the ability to lease the space.
21. The applicant may exceed the 10% retail floor area flexibility, if approved by the Zoning Commission. The Commission reserves the discretion to determine the proceedings by which will consider any matter submitted to it, pursuant to Condition No. 20 (i) of this order.
22. The applicant shall implement the transportation management program, and the garage and loading management plan for the project, as shown in Exhibit No. 101.
23. The applicant shall develop and submit to the Department of Public Works and the Federal Highway Administration prior to obtaining building permits for the project, a construction management plan for review and approval.
24. Prior to the issuance of a certificate of occupancy, the applicant shall negotiate an agreement with the

Department of Recreation regarding the beautification, enhancement and maintenance of the District-owned park immediately north of the PUD site at the intersections of Massachusetts Avenue, N.W., and H Street, N.W., for the life of the PUD.

25. The applicant shall implement the agreement with the District of Columbia Department of Employment Services to participate in the District's First Source Employment Program to fill entry-level positions over which the applicant has direct control.
26. The applicant shall implement the memorandum of understanding with the Minority Business Opportunity Commission which provides for the applicant to make a bona fide effort toward providing at least thirty-five (35) percent of the construction related contracts for the project to certified minority business enterprises.
27. The applicant shall enter into an agreement with the Washington Building and Construction Trades Council to participate in a job apprenticeship training program for District youths.
28. The applicant shall create a minority business enterprise corporation, which will provide technical and financial assistance to minority contractors in order to increase their participation in the construction of the project.
29. The amendment to the Zoning Map from unzoned property to C-3-C for the PUD site shall be effective upon recordation of a PUD covenant, as required by 11 DCMR 2407.
30. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, application must be filed for a building permit as specified in subsections 2407.2 and 2407.3 of the Zoning Regulations. Construction shall start within three years of the effective date of this order.
31. No building permit shall be issued for the project until the applicant has recorded a PUD covenant in the land records of the District of Columbia, between the owner and the District of Columbia, satisfactory to the Office of the Corporation Counsel and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (DCRA), which covenant shall bind the applicant and successors in title to construct on and use this site in accordance with this order or any amendments thereof.

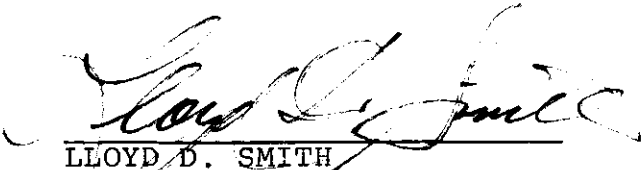
32. The Zoning Secretariat shall not release the record of this case to the Zoning Regulations Division of DCRA until the applicants have filed a certified copy of said covenant in the records of the Zoning Commission.
33. Pursuant to D.C. Code Sec. 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the Applicant is required to comply fully with the provisions of D.C. Law 2038, as amended, codified as D.C. Code, Title 1, Chapter 25, (1987), and this Order is conditioned upon full compliance with those provisions. Nothing in this Order shall be understood to require the Zoning Regulations Division/DCRA to approve permits, if the applicants fail to comply with any provision of D.C. Law 2-38, as amended.

Vote of the Zoning Commission taken at the public meeting on February 12, 1990: 4-0 (William L. Ensign, John G. Parsons and Maybelle Taylor Bennett, to approve with conditions and Lloyd D. Smith, to approve by absentee vote - Tersh Boasberg, not voting having recused himself).


The conditions, guidelines and standards were approved by the Zoning Commission at the public meeting on April 16, 1990.

This order was adopted by the Zoning Commission at the public meeting on June 11, 1990 by a vote of 4-0 (Maybelle Taylor Bennett, John G. Parsons, William L. Ensign and Lloyd D. Smith, to adopt as amended - Tersh Boasberg, not voting having recused himself).

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is on JUL 20 1990.



LLOYD D. SMITH
Vice Chairman
Zoning Commission



EDWARD L. CURRY
Edward L. Curry
Zoning Secretariat